

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No. 335 of 1981

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

BHANA BHAGWAN & COMPANY

Versus

HEIRS OF DECEASED BHAVAN VASHRAM

Appearance:

MR SURESH M SHAH for Petitioner
NOTICE SERVED for Respondent No. 2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 11/10/2000

ORAL JUDGEMENT

This appeal arises of the judgment and order
dated 22nd June, 1981 passed by the learned
Extra-Assistant Judge, Bhavnagar in Regular Civil Appeal
No. 119 of 1979 passed by the learned Civil Judge (JD),

Sihor in Civil Suit No. 57 of 1974. The appellant before this Court is the plaintiff.

2. The plaintiff is the partnership firm which had money lending business and also possessed the licence for such business. It was the case of the plaintiff that the plaintiff had on 9th January, 1972 advanced a sum of Rs. 6000/= to the deceased Defendant No. 1 - Bhavan Vashram and the defendant no. 2-Kanbi Makod Bhavan on interest at the rate of 1 per cent per month. Against the said loan amount, on 7th March, 1972, the defendant no.1 had paid a sum of Rs. 2000/= towards the principal amount and a sum of Rs. 160/= towards the interest. The rest of the loan amount and the interest remained unpaid. The plaintiff, therefore, sued for recovery of Rs. 5,300/=; including a sum of Rs. 4000/= towards loan amount, Rs. 1280/= towards interest @ 12% p.a. on the loan amount and Rs. 20/= towards the notice charges. The suit was duly contested by the defendants by filing written statement Exh. 10. It was contended that on the date of the suit, the plaintiff firm was not in existence. The defendants denied the fact of borrowing loan in the sum of Rs. 6000/=, as alleged. It was contended that some amount was borrowed in the year 1970-71 and was repaid. The defendants, however, being illiterate, a false case was made out against the defendants.

The learned trial Judge considering the evidence on record held that the plaintiff had advanced a sum of Rs. 6000/= to the defendants [as alleged]; that the defendants had repaid a sum of Rs. 2000/= towards the said loan amount and Rs. 160/= towards interest. The learned trial Judge further found that a sum of Rs. 3000/= was repaid by the defendants towards the loan amount on 13th March, 1972 [vide receipt Exh. 85] which was not credited to the accounts of the defendants. Considering the above referred payment made by the defendant, the learned Judge found a sum of Rs. 960/= due towards the loan amount and a sum of Rs. 201=60 p. due towards the interest. Pending the suit, the defendant no. 1 Bhavan Vashram died and his heirs and legal representatives were brought on the records. However, it was proved that the land belonging to the deceased Bhavan Vashram devolved on the defendant no. 2 alone and rest of the heirs had relinquished their right to the said land. A decree was passed against the defendant no. 2 alone. The defendant no. 2 was ordered to pay a sum of Rs. 1161=60 p. due towards the loan amount and interest on the date of the suit and directed to pay future interest @ 6% p.a. over the unpaid loan amount of Rs. 960=/. Feeling aggrieved, the plaintiff

preferred the above referred Regular Civil Appeal No. 119 of 1979 before the District Judge, Bhavnagar. The defendants also preferred cross objection.

The learned Extra-Assistant Judge, Bhavnagar under his judgment and order dated 22nd June, 1981 dismissed the appeal and also the cross objection. However, the learned Judge was of the view that the plaintiff had failed to comply with the provisions contained in sections 18 and 19 of the Bombay Money Lenders Act, 1946 [hereinafter referred to as, 'the Act'], and therefore, in view of Section 21 of the Act, held that the plaintiff shall not be allowed interest of Rs. 101=60 p. and modified the decree accordingly. Feeling aggrieved, the plaintiff has preferred the present appeal.

While admitting the appeal, this Court has framed the substantial question of law as under :-

'Whether in the facts and circumstances of the case, the courts below committed an error in not raising the issue as required by section 21 of the Bombay Money Lenders Act, and what is its effect.'

Section 18 of the Act, inter alia, enjoins upon the money lender to keep and maintain a Cash Book and a Ledger in such form and in such manner as may be prescribed; to deliver or cause to be delivered to the debtor, within 30 days of the date on which the loan is made, a statement in any recognized language showing clear and distinct terms the amount and date of the loan and of its maturity, the nature of security, if any, for the loan, the name and address of the debtor and of the debtor and of the money-lender and the rate of interest charged; upon repayment of a loan in full, mark indelibly every paper signed by the debtor with words indicating payment or cancellation, and discharge every mortgage, restore every pledge, return every note and cancel or reassign every assignment given by the debtor as security for the loan; not to receive any payment from debtor on account of any loan without giving him a plain and complete receipt for the payment; not to accept from a debtor any article as a pawn, pledge or security for a loan without giving him a plain signed receipt for the same. Section 19 of the Act enjoins upon the money lender, inter alia, to deliver every year to each of his debtors a legible statement of such debtors' accounts

signed by the money lender or his agent of any amount that may be outstanding against such debtor. The statement shall show the particulars mentioned in sub-section 1 of the said Section; to furnish a statement of accounts on demand in writing being made by the debtor containing particulars referred to in sub-section 1 of the said Section; to supply on demand in writing by the debtor, a copy of any document relating to any loan made by him or any security therefor to the debtor. As it is evident that both the above referred sections cast a duty upon the money lender to maintain accounts of each of his debtors containing particulars referred to in Section 18 of the Act and shall supply a copy of such accounts to the debtor. Section 21 enjoins upon a Court trying a suit regarding loans to frame and decide the issue whether the money lender had complied with the provisions of Sections 18 and 19; if the court finds that the said provisions have not been complied with by the money lender which may; if the plaintiff's claim is established, in whole or in part, disallow the whole or any portion of interest found due, as may seem reasonable to it in the circumstances of the case and may disallow the costs. Thus, in the event, the money lender is found to have contravened the provisions contained in Sections 18 and 19 of the Act, the only consequence that would befall such money lender would be loss of interest and costs, even though he successfully establishes his claim. In other words, the only power that is vested in the Court is to disallow the whole or any portion of the interest found due and the costs. Thus, the duty cast upon the Court under Section 21 of the Act as regards the ascertainment of compliance with duties cast upon the money-lender under sections 18 and 19 of the Act and the consequence for non-compliance is limited to the above extent only. In the event, the Court fails to frame the issue, as envisaged under Section 21 of the Act and refrains from giving its finding as regards the compliance with the provisions contained in Sections 18 and 19 of the Act, the only consequence should be that the Court would be divested of its power to disallow whole or any portion of interest found due and the costs. Therefore, in my view, the provisions contained in Section 21 of the Act is directory in nature and not mandatory. Hence, in my view, in the event, the court fails to frame the issue as envisaged under Section 21 of the Act and fails to give its finding as regards the compliance with the provisions contained in Sections 18 and 19 of the Act the validity of the judgment or decree shall not be affected. But in that case, the Court shall not be empowered to disallow whole or any part of interest found due to the plaintiff or the costs.

In the present case, it is indisputable that the trial Court failed to frame issue as envisaged under Section 21 of the Act and has not given finding with respect to the duties cast upon the plaintiff under Sections 18 & 19 of the Act. However, the lower Appellate Court has proceeded on the basis that the provisions contained in Sections 18 and 19 of the Act had not been complied with, and has accordingly disallowed the interest found due to the plaintiff. In my view, the lower Appellate Court has erred in disallowing the interest found due to the plaintiff. In absence of the finding to the effect that the plaintiff had failed to comply with the provisions contained in Sections 18 and 19 of the Act, the Court shall have no power to disallow the interest found due to the plaintiff or any part thereof or the costs. The appeal is required to be allowed to that extent.

The appeal is allowed to the aforesaid extent. The judgment and order dated 22nd June, 1981 passed by the learned Extra-Assistant Judge, Bhavnagar in Regular Civil Appeal No. 119 of 1979 is quashed and set-aside. The judgment and order dated 15th September, 1979 passed by the learned Civil Judge (JD), Sihor in Civil Suit No. 57 of 1974 is restored. The respondent no. 2 shall bear the proportionate costs of the appellant and shall also bear his own costs.

Prakash*